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10 UNITED STATES BANKRUPTCY COURT
11 EASTERN DISTRICT OF CALIFORNIA – SACRAMENTO DIVISION

12 In re:
13 SK FOODS, L.P., a California limited
14 partnership, et al.,
15 Debtors.

Case No. 09-29162-D-11

Chapter 11

DC. No. SH-25

16 In re:
17 RHM INDUSTRIAL/SPECIALTY FOODS,
18 INC., a California Corporation d/b/a Colusa
19 County Canning Co.

Debtor

Case No. 09-29162-D-11

Chapter 11

Objection by Receiver on behalf of Salyer
American Fresh Foods to Response of
Chapter 11 Trustee to Producer's Lien Claim;
Request to Meet and Confer re Resolution of
Claim; and Request for Evidentiary Hearing
if Claim Cannot be Resolved

20 This Objection is filed by Steve Franson, appointed to act as Asset
21 Receiver, in the civil action captioned as BANK OF THE WEST, a California banking
22 corporation, as Administrative Agent for itself, AgStar Financial Services, PCA/FLCA,
23 and FCS Financial, PCA, Plaintiff, versus SALYER AMERICAN FRESH FOODS, a
24 California corporation, SALYER AMERICAN COOLING, a California general
25 partnership, and DOES 1 through 50, inclusive, Defendants, and which action is now
26 pending as Civil Case No. M98573 in the Monterey County Superior Court (hereinafter
27 "Receiver").

28 Receiver previously filed a Producer's Lien Claim on behalf of Salyer
American Fresh Foods ("SAFF" or "Claimant") herein in compliance with this Court's

1 “Amended Order Establishing and Implementing Exclusive Procedures for Administering
2 Pre-Petition PACA and Producers’ Lien Claims” (the “Amended Order”). Said Claim
3 was served by Federal Express overnight delivery and was timely served by the Receiver
4 as admitted by the Trustee in his Response.

5 This Objection is accompanied by additional documentation in the form of
6 the declarations of Eric Schwartz and John Bryce.

7 The Trustee’s Response was to deny the Producer’s Lien Claim of SAFF
8 in its entirety. The Trustee’s Response is based on speculation, and one-sided,
9 incomplete, and faulty information regarding the facts and circumstances of the peppers
10 program on which the Producer’s Lien claim is based. The Trustee’s Response also is
11 based on a reading of the California Producer’s Lien law that is both narrow and
12 unsupported by the express terms of the operative statutes.

13 **Preliminary Objections**

14 The Trustee objects to the Claim partly on the basis that it fails to provide
15 evidence for the costs claimed and fails to authenticate other evidence filed in support of
16 the claim. The Trustee is the one that established the form of the claim to be filed by
17 claimants and the categories of information to be supplied. The requirement for filing a
18 claim was a statement of good faith. A plain reading of the Amended Order shows that
19 the intent of the initial claim filing was not to prove the claim beyond a shadow of a
20 doubt but to submit evidence of a claim in good faith. The materials supplied with the
21 Claim are sufficient to create prima facie evidence of the Claim, particularly where the
22 merit of the Claim is substantially based on the testimony of witnesses.

23 The Amended Order provides for a hearing, which Claimant assumes
24 would be an evidentiary hearing on the Claim, if the Trustee and the Claimant cannot
25 resolve any objections, to be conducted after appropriate discussions and efforts to
26 resolve the Claim had been conducted and appropriate discovery had taken place.
27 Claimant believes that many of the records that support its Claim are in the custody and
28 control of the Trustee. Claimant reserves the right to subpoena records of SK Foods,

1 depose witnesses, and conduct relevant discovery as necessary to prove its claim prior to
2 any evidentiary hearing thereon. In the mean time, Claimant has met its burden of
3 providing the Trustee with sufficient evidence for the good faith filing of its Claim to
4 which the Trustee has now responded.

5 **Statement of Factual Grounds on Which Claimant Objects**

6 The Trustee concedes SAFF was engaged by SK Foods to grow peppers
7 for SK Foods in both Yuma, Arizona and Greenfield, California, and that SAFF actually
8 grew and delivered peppers to SAFF. The only factual issue that seems to be in
9 contention is the price that SK Foods agreed to pay for peppers that it required SAFF to
10 grow for the use and benefit of SK Foods.

11 Claimant contends that SAFF grew peppers for the use and benefit of SK
12 Foods and that SK Foods agreed to pay SAFF for the peppers on a farming cost per acre
13 plus 5% basis. SK Foods contends that SK Foods never agreed to this but was willing to
14 pay SAFF for the peppers at the rate of \$500 per delivered ton.

15 As is shown by the documents supplied by both the Receiver and the
16 Trustee, the terms of payment were a matter both of uncertainty and concern to both SK
17 Foods and SAFF up until November, 2008. SAFF's position was that it should not be the
18 company that bore the risk of producing peppers out of season in Yuma, Arizona and that
19 it should not be the company that bore the risk of SK Foods not taking all of the peppers
20 from the acreage planted by SAFF. SK Foods ultimately agreed with SAFF's position as
21 set forth in the declarations of Eric Schwartz and John Bryce. The fact that SK Foods
22 was still wondering in 2009 how to book this for accounting purposes does not change
23 the terms of the agreement that was made in November 2008.

24 **Statement of Legal Grounds on Which Claimant Objects**

25 **Objection to Assertion that California Producer's Lien laws do not**
26 **apply to produce grown outside of California by a California company.** The Trustee
27 concluded in the Trustee's Response that that portion of Claimant's Producer's Lien claim
28 that relates to peppers grown in Yuma, Arizona, is not valid on the assertion that

1 California Producer's Lien laws do not apply to produce grown outside of the State of
2 California.

3 The Trustee asserts that, following a conflict of laws analysis, the most
4 appropriate law to apply is Arizona, notwithstanding the fact that Claimant is located in
5 California.

6 The conflict of laws analysis actually supports the application of
7 California law to Claimant's claim. An unbiased reading of the California Producer's
8 Lien statutes leaves no doubt that it is applicable to "any person" that is engaged in the
9 business of producing a farm product and to "every producer of any farm product" that
10 sells produce grown by him to any processor.

11 Specifically, Cal. Food & Agric. Code Section 55631, which describes the
12 "nature and scope" of a Producer's Lien, unequivocally states that "every producer of
13 farm product that sells any product which is grown by him to any processor . . . , in
14 addition to all other rights and remedies which are provided for by law, has a lien upon
15 such product and upon all processed or manufactured forms of such farm product. . ."
16 Moreover, Cal. Food & Agric. Code Section 56110 defines "producer" as "any person
17 that is engaged in the business of growing or producing any farm product."

18 California courts have long held that the first step in evaluating a statute is
19 to look to the words used by the Legislature and give them their usual, ordinary meaning.
20 Garcia v. McCutchen (1997) 16 Cal.4th 469, 476, 66 Cal. Rptr.2d 319, 940 P.2d 906.
21 Generally, the analysis of statutory language ends once a court has determined that the
22 words used are clear and unambiguous. Hughes v. Board of Architectural Examiners
23 (1998) 17 Cal.4th 763, 775, 72 Cal.Rptr.2d 624, 952 P.2d 641 (judicial construction is
24 generally unnecessary where statutory language is clear and unambiguous, i.e., has only
25 one reasonable construction). Certainly, the federal courts echo this procedure. To quote
26 Middle Mountain Land and Produce, Inc. v. Sound Commodities, Inc., 307 F.3d 1220,
27 1222-24 (9th Cir. 2002): "[W]here [Congress'] will has been expressed in reasonably
28 plain terms, that language must ordinarily be regarded as conclusive."

1 Given that the Producer's Lien statute expressly and plainly applies to
2 "every producer" and that "producer" is defined by the statute as "any person", there
3 should be no doubt that the statute means what it says. Diamond Multimedia Systems,
4 Inc. v. Superior Court, 19 Cal. 4th 1036, 1052 (1999) (in ruling that out-of-state
5 purchasers who were affected by market manipulation within the State of California may
6 avail themselves of the California statutory remedy, the court noted that under the statute
7 "relief was available to 'any person'," not just to California purchasers).

8 Nor is the definition of "farm product" limited to California grown
9 produce, a limitation that the California Legislature could have easily made if it intended
10 to limit the Producer's Lien law to California grown produce only. Cal. Food & Agric.
11 Code Section 55403 ("Farm product' includes every agricultural . . . product of the
12 soil..."). In short, the California Food & Agricultural Code gives a Producer's Lien to
13 every producer, regardless of where the produce was grown.

14 SAFF is a California based company. It is entitled to the protections of
15 the California Producer's Lien law even if the produce that it supplied to SK Foods was
16 grown outside of California. Even if the California Producer's Lien law did not so
17 unambiguously apply to all producers, the Trustee's choice of law analysis compels the
18 application of the Producer's Lien law to California growers growing produce out of state
19 as well as non-California growers growing produce out of state.

20 First, the Trustee argues that, under the Restatement (Second) of Conflict
21 of Laws Section 251 (1971), the greatest weight should be given to "the location of the
22 chattel at the time that the security interest attached." Id. Section 251(2). Under the
23 Producer's Lien statute, the lien "attaches from the date of delivery of the product."
24 Cal. Food & Agric. Code Section 55635. The Trustee asserts that – although there is no
25 definition of "delivery" in the statute – "delivery" occurs when the produce is placed on
26 the truck in the state where it is grown. Delivery in the produce context, however, does
27 not occur until the fruits and vegetables arrive at their final destination, in this case
28 California, where the processor, SK Foods, may accept or reject the produce.

1 In the produce industry, a shipper must place the produce FOB [free on
2 board] a truck "in suitable shipping condition" so as to "assure delivery without abnormal
3 deterioration at the contract destination." 7 C.F.R. Section 46.42(j). In addition, upon
4 delivery at destination, the buyer has the right to inspect the produce and reject it if it
5 does not meet the USDA's "good delivery" standards of the parties' contractual standards.
6 7 C.F.R. Sections 46.2(bb), (cc), (dd); 7 C.F.R. Section 46.44.

7 The argument of the Trustee that Erik Wilson traveled to Yuma, Arizona
8 to "accept and/or reject the crop of peppers" has nothing to do with delivery of the
9 peppers but only an inspection of the crop. In fact, Mr. Wilson states that "the cost of
10 harvest far outweighed any benefit that could be recovered by the meager harvest." Why
11 would Mr. Wilson care about the cost of harvest if in fact SK Foods was not obligated to
12 pay those costs? Only the fact that SK Foods was responsible for the farming costs as the
13 costs of the peppers to be paid to SAFF explains this statement. Indeed, delivery and
14 quality of the peppers was not an issue under the agreement between SAFF and SK
15 Foods because the agreement was for SK Foods to pay the per acre farming costs plus 5%
16 and a producer's lien for the purchase price arises upon delivery of any produce by SAFF
17 to SK Foods.

18 In addition, as the Trustee explains, other factors may come into play in
19 determining what law to apply; however, he concludes that "California has zero interest"
20 in extending its law to protect out-of-state growers. In so arguing, he misses the
21 overwhelming interests that California has in these transactions, as is evident from the
22 statute's use of the terms "any person" and "every producer". Indeed, the California Food
23 & Agricultural Code was enacted, in part, to protect the public health, safety, and
24 welfare, and the Legislature instructed that it should be liberally construed to accomplish
25 this purpose. Cal.Food & Agric. Code Section 3. Certainly, "the public" includes
26 Claimant.

27 Moreover, California has expressed a significant interest in regulating the
28 activities of processors and in insuring that they are in sound financial condition and pay

1 for the farm product delivered to them. See Food & Agric. Code Sections 55601
2 (requires payment), 55521 (processors must be licensed), and 55523.2 (a processor's is in
3 unsound financial condition is grounds for denying a license). In short, California has a
4 legitimate and compelling interest in preserving a business climate where processors pay
5 their suppliers, whether they grew their produce in California or elsewhere, and thereby
6 maintain and enhance the viability of the agricultural processing industry in California.

7 The Trustee also fails to acknowledge that SK Foods is a licensed
8 California processor regulated by the State of California and that payment would be
9 issued from California. SK Foods took possession of the produce in California and the
10 conduct that gave rise to SK Foods' liability arose in California.

11 All of these factors compel application of the California Producer's Lien
12 law to all producers, regardless of where the produce was grown.

13 Cal. Food & Agric. Code Section 55631 also states that the Producer's Lien law is
14 "in addition to all other rights and remedies which are provided for by law."
15 Consequently, the California Producer's lien law applies, regardless of any other laws.

16 **Objection to Assertion that California Producer's Lien laws do not**
17 **apply to produce grown under contract.** The Trustee objects to any claim by SAFF for
18 payment for peppers grown under contract for SAFF and delivered to SK Foods. As set
19 forth in the original claim filed by Claimant acknowledged that \$26,742 in peppers were
20 grown by C&G Farms for SAFF for delivery to SKF. Without belaboring the issue for
21 the minor amount in dispute, suffice it to say that Cal. Food & Agric. Code Sec. 55408
22 defines a "Producer" as any person engaged in the business of growing or producing any
23 farm product." In other word, the fact that SAFF may have produced the peppers for SK
24 Foods via a custom farming agreement is not necessarily determinative of SAFF's status
25 as a Producer under the statute.

26 **Objection to Assertion that there is no contract.** As noted by the
27 Trustee, partial performance of a contract takes it out of the statute of frauds. The
28 Trustee admits both delivery of the peppers by SAFF and payment for some of the


1 peppers by SK Foods. There is no doubt as to the existence of a contract between SAFF
2 and SK Foods. The only issue is what is that of the correct price of the peppers under the
3 contract.

4 **Requests and Reservations of Rights**

5 For the reasons stated, Claimant objects to the Response of the Trustee. Claimant
6 invites the Trustee to meet and confer regarding resolution of differences regarding the
7 Claim. If the Claim cannot be resolved, then Claimant reserves the right to prove its
8 Claim at an evidentiary hearing after opportunity for appropriate discovery. Claimant
9 further reserves the right to advance any favorable evidence and make any further legal
10 arguments in connection with the hearing, whether or not previously set forth, herein or
11 otherwise.

12 Dated: January 23, 2010

PERKINS MANN & EVERET APC

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15 Reid H. Everett, Attorneys for
16 STEVE FRANSON, Asset Receiver,
Salyer American Fresh Foods

17 (Steve Franson is the Receiver appointed to act in the case of BANK OF THE WEST, a
18 California banking corporation, as Administrative Agent for itself, AgStar Financial
19 Services, PCA/FLCA, and FCS Financial, PCA, Plaintiff, versus SALYER AMERICAN
20 FRESH FOODS, a California corporation, SALYER AMERICAN COOLING, a
21 California general partnership, and DOES 1 through 50, inclusive, Defendants, Civil
22 Case No. M98573, Monterey County Superior Court)